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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/159,520	09/23/1998	TROY GENE ANDERSON	HW-106-CIP	5244

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EXAMINER

PENDLETON, BRIAN T

ART UNIT

PAPER NUMBER

2644

DATE MAILED: 08/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/159,520

Applicant(s)

ANDERSON ET AL.

Examiner

Brian T. Pendleton

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 1998.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,5,6,7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Admitted Prior Art (APA) in view of Davis, US Patent 5,352,181. The APA discloses several digital sound relaxation devices including the Marsona 1250, Tranquil Moments TM-500 Sound Relaxation System, and the Digital Sound Soother XS which disclose a housing, at least one speaker, a digital memory for storing samples of sounds to be replayed continuously, at least one selector switch to select the sound to be replayed and a sound controller. The prior devices do not disclose a sleep induce mode wherein the sound to be replayed is played repetitively for a first time interval and at a second time interval which consists of a certain number of third time intervals, the replay rate decreasing for each successive third time interval. Such a technique was well known in the art for promoting relaxation and inducing sleep. Davis discloses a method for achieving Alpha and Theta brainwave states, which were commonly known in the art to bring about relaxation. As taught in the abstract and column 2 lines 50-55, musical composition is recorded for playback which has an initial tempo which is decreased to a final tempo. Also taught in column 3 lines 20-26, an user's brainwave cycles will try to synchronize with the tempo of the music. Therefore, it was taught that

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music could be played at a certain tempo and decreased in that tempo for the purpose of inducing a brainwave state. One of ordinary skill in the art would have used the teachings of Davis to induce sleep by playing sounds and decreasing their playback rate over time. It would have been obvious to one of ordinary skill in the art at the time of invention to combine the teachings of Davis in any of the devices of the prior art since it would have enhanced the relaxation properties of them. As taught in column 4 lines 20-26 of Davis, the tempo is decreased at 2 beats/minute, however, it was well within the scope of the teachings to use any decrement value, thereby making the claimed time intervals obvious design choices. Claims 1 and 8 are met. Per claim 2, as explained above, the method of inducing deep relaxation is taught by Davis. As to claims 3-5, the prior art devices already were configured for a sound soothing function and modifying them per the teachings of Davis to have a further sound relaxation mode would have required a switch to select between the sound soothing function and the relaxation mode.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over APA in view of Hatta et al, US Patent 4,589,779. As discussed above, the prior art devices disclose a digital sound relaxation machine having a housing, speaker, selector switch, memory having a library of selectable sounds and a sound controller. The sound controller retrieves a selected sound for replay and replay it continually. However, the prior art devices do not incorporate an alarm set mode, an alarm check mode and an alarm mode. Nonetheless, alarm modes whereby a specific alarm can be sounded at a specific time were well known in the art. Hatta et al teach that

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conventional alarm clocks were designed so that a stored message could be selected from a plurality of messages and be outputted at a certain time. Thus, it was taught to have a library of sounds that can be replayed as a wake-up sound, as claimed by Applicant. It would have been obvious to one of ordinary skill in the art at the time of invention to include an alarm mode in the prior art devices since those devices are related to sleep induction and relaxation and an user would have benefited from having an alarm feature in the same device as that which provides a sleep effect. Examiner makes official notice that alarm clock devices have alarm check modes that display if and when an alarm is set. Modifying the prior art devices would also include displaying which selected sound for the alarm. Per claim 7, it would have been obvious to use two volume control switches for the two modes (continual replay mode, alarm mode) since a waking volume would have to be higher than a sleep inducing volume.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian T. Pendleton whose telephone number is (703) 305-9509. The examiner can normally be reached on M-F 7-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Forester W. Isen can be reached on (703) 305-4386. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9314.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.



Brian Tyrone Pendleton
August 8, 2002



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SUPERVISORY PATENT EXAMINER
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